



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: MAY 30, 2023

IN THE MATTER OF:

Appeal Board No. 628244

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determinations holding the claimant ineligible to receive benefits, effective October 25, 2021 through October 31, 2021, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and holding the claimant ineligible to receive benefits, effective November 1, 2021 through May 29, 2022, on the basis that the claimant did not comply with registration requirements. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor. By decision filed February 24, 2023 (A.L.J. Case No. ), the Administrative Law Judge granted the claimant's application to reopen A.L.J. Case. No. 022-22881, and sustained the initial determinations.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determinations holding the claimant ineligible on the bases of failure to certify and failure to register.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant was separated from employment under circumstances not at issue, and filed a claim for unemployment benefits online with the assistance of a friend on October 29, 2021; her claim was made effective October 25, 2021. The claimant knew she was supposed to claim benefits each week, and knew she could do so either on the internet or over

the phone.

A monetary benefit determination was mailed to the claimant on November 1, 2021 in connection with her claim. The determination advised the claimant that based upon her base period earnings, her weekly benefit rate would be \$446. The notice also advised the claimant, "Continue to claim benefits for each week that you are unemployed" and provided the Department of Labor (the Department) web address to access the internet, and Tel-Service phone number to call. The claimant received this notice on or about November 8, 2021. On November 8, 2021, the claimant for the first time tried to certify online, but received the message that her access to certify online was blocked, and she was instructed to call the Department.

After receiving this message, the claimant called a telephone number for the Department on November 8, 2021. On November 9, 2021, the claimant placed four calls to the same number. On November 29, 2021, the claimant placed two calls to the same number. Between February 8, 2022, and February 28, 2022, the claimant placed 24 calls to the same Department number. Between March 3 and March 10, 2022, the claimant placed 22 calls to the number, and called again three times on April 4, 2022 and one time on April 6, 2022. Each time the claimant called, except once, the call was answered, the claimant responded to prompts for her social security number, birthdate, and PIN #, and the claimant received an automated message that the lines were busy, and she should call again at a later time.

The claimant also sent e-mails to the Department expressing the difficulties she was having in her attempts to certify, but received no response. On one occasion, the date of which the claimant does not recall, the claimant spoke with an individual, who asked the claimant whether she had a valid work authorization. When the claimant responded that she did not, the representative suggested that might be the reason she was having trouble certifying.

Although the claimant called the Department phone number a total of 57 times from November 8, 2021 through April 6, 2022, she was unable to certify for benefits during any of those calls.

**OPINION:** The credible evidence establishes that, beginning November 8, 2021, the claimant called the Department of Labor numerous times in a continuing and concerted effort to certify for unemployment benefits, but was

unable to do so. The claimant's credible testimony, supported by her telephone records, establishes that in all but one of the 57 calls the claimant made to the Department, her call went through, but she was told to call back at a later time because the lines were busy. On the one occasion when the claimant did speak with someone, she was not assisted in her attempt to certify.

We credit the claimant's consistent testimony that she made numerous calls to the Department in an attempt to certify for benefits, but was unable to do so through no fault of her own. We find it significant that the Commissioner of Labor was represented at the hearings, but the hearing representative did not provide testimony or other evidence to refute the claimant's telephone records establishing 57 calls to the Department during the period at issue, or to discredit the claimant's testimony that each of the calls-save one-resulted in the claimant being advised that the lines were busy, and that she should call back, thereby thwarting her repeated certification attempts. The representative did not establish, or even contend, that the claimant would not have received such a message when she called the Department during this period, and did not allege or establish that the Department was not experiencing any technological problems at the time the claimant was attempting to certify.

By contrast, throughout multiple hearings, the claimant has presented and supported her position that after filing her claim, she made numerous attempts to certify for benefits, but was unable to do so. While the claimant did not independently recall the specific dates that she attempted to call and certify, her telephone records, which are not disputed, establish the dates, number, and frequency of her calls. We find that

the consistent, credible, and unrefuted evidence establishes that the claimant made reasonable, diligent, and sustained efforts, beginning November 8, 2021, to claim weekly benefits, but was prevented from doing so. Whether the numerous calls were not completed for technological or other reasons, the record establishes concerted and largely continuous attempts by the claimant to certify for benefits. We note that the claimant's phone records reflect a period of time when she was not regularly calling the Department phone number. However, we find that this gap, which may have been the result of the claimant's conversation with a Department representative about the status of her work authorization, is not determinative of the issues before us, since it was preceded by, and followed by, numerous, regular calls by the claimant trying to claim weekly benefits. When viewed as a whole, we find that the

claimant's 57 calls demonstrated a persistent and diligent effort to certify for benefits beginning November 8, 2021, and we conclude that the claimant is eligible to receive benefits as of that date.

However, since the claimant's claim was effective October 25, 2021, and since the claimant knew she had to certify weekly but did not attempt to do so until November 8, 2021, we find that the claimant failed to certify for the first week of her claim, and thereafter failed to register until November 8, 2021. Accordingly, we conclude that the claimant is ineligible to receive benefits effective October 25, 2021 through November 7, 2021.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is modified as follows and, as so modified, is affirmed.

The initial determination holding the claimant ineligible to receive benefits, effective October 25, 2021 through October 31, 2021, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification, is sustained.

The initial determination holding the claimant ineligible to receive benefits, effective November 1, 2021 through May 29, 2022, on the basis that the claimant did not comply with registration requirements, is modified to be effective November 1, 2021 through November 7, 2021 only, and as so modified is affirmed.

The claimant is allowed benefits in part, and denied benefits in part, with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER